



[4380-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9642]

RIN 1545-BL48

Information Reporting of Mortgage Insurance Premiums

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations that require information reporting by persons who receive mortgage insurance premiums, including prepaid premiums, aggregating \$600 or more during any calendar year. The final regulations implement reporting requirements that result from the extension of the treatment of mortgage insurance premiums made by the American Taxpayer Relief Act of 2012. These regulations will affect any person who, in the course of a trade or business, receives from an individual mortgage insurance premiums that in the aggregate total \$600 or more during a calendar year.

DATES: Effective Date: These regulations are effective on **[INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**.

Applicability Date: For dates of applicability, see §1.6050H-3(g).

FOR FURTHER INFORMATION CONTACT: Janet Engel Kidd at (202) 317-6844 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 6050H(h) of the Internal Revenue Code (Code) relating to reporting requirements for mortgage insurance premiums. Section 6050H(h)(1), enacted on December 20, 2006, by section 419(c) of the Tax Relief and Health Care Act of 2006, Public Law 109-432 (120 Stat. 2967), provides that the Secretary may, by regulations, require any person who, in the course of a trade or business, receives payments of mortgage insurance premiums from an individual aggregating \$600 or more during any calendar year to file a return regarding those payments in the form, at the time, and containing the information prescribed by the Secretary. Under section 6050H(h)(2), on or before January 31 of the year following the year in which the premium is received, a person required to file an information return under section 6050H(h)(1) must send a written statement to the individual to whom the information return relates showing the information prescribed by the Secretary. Section 6050H(h)(3)(A) provides that rules similar to the rules in section 6050H(c), relating to the applicability of the section 6050H reporting requirements to governmental units, will apply with respect to mortgage insurance premiums. Section 6050H(h)(3)(B) defines the term “mortgage insurance” to mean mortgage insurance provided by the Veterans Administration (the predecessor to the Department of Veterans Affairs), the Federal Housing Administration, or the Rural Housing Administration (the predecessor to the Rural Housing Service), and private mortgage insurance (as defined by section 2 of the Homeowners Protection Act of 1998) (12 U.S.C. 4901), as in effect on the date of

enactment of section 6050H(h), which is the same definition as “qualified mortgage insurance” in section 163(h)(4)(E).

In general, section 163(h)(3)(E) treats premiums paid for qualified mortgage insurance by a taxpayer during the taxable year in connection with acquisition indebtedness with respect to a qualified residence as qualified residence interest. Prior to amendment in 2013, section 163(h)(3)(E) was effective for amounts paid or accrued between January 1, 2007, and December 31, 2011, or properly allocable to any period ending on or before December 31, 2011, on mortgage insurance contracts issued on or after January 1, 2007. Section 204 of the American Taxpayer Relief Act of 2012 (ATRA), Public Law No. 112-240, 126 Stat. 2313, enacted on January 2, 2013, retroactively applied the tax treatment of qualified mortgage insurance premiums as qualified residence interest for 2012, and it extended that treatment to premiums paid or accrued on or before December 31, 2013, or properly allocable to any period ending on or before December 31, 2013, on mortgage insurance contracts issued on or after January 1, 2007. Unless extended or made permanent by further legislation, section 163(h)(3)(E) will not apply to amounts paid or accrued after 2013 or properly allocable to any period after 2013.

On May 7, 2009, the Treasury Department and the IRS published temporary regulations (TD 9449) under section 163 in the **Federal Register** (74 FR 21256) that explained how to allocate prepaid qualified mortgage insurance premiums to determine the amount of the prepaid premium that is treated as qualified residence interest each taxable year. The temporary regulations also provided guidance as to reporting requirements under section 6050H(h) to reporting entities receiving premiums, including

prepaid premiums, for mortgage insurance. On the same day, the Treasury Department and the IRS published a notice of proposed rulemaking (REG-107271-08) cross-referencing the temporary regulations in the **Federal Register** (74 FR 21295). No public hearing was requested or held. No comments responding to the notice of proposed rulemaking were received.

On May 7, 2012, the Treasury Department and the IRS published final regulations (TD 9588) in the **Federal Register** (77 FR 26698) adopting the proposed regulations under section 163 relating to the allocation of prepaid qualified mortgage insurance premiums, as amended. Those final regulations did not finalize the proposed regulations relating to the reporting requirements under section 6050H(h) for entities receiving mortgage insurance premiums. At that time, the deduction for qualified mortgage insurance premiums under section 163 did not apply to amounts paid or accrued after December 31, 2011, and the Treasury Department and the IRS determined not to require the reporting of nondeductible premiums. The temporary regulations on the reporting requirements, which were in §1.6050H-3T, expired on May 4, 2012.

Explanation of Revisions

The final regulations adopt the proposed regulations under §1.6050H-3 with two minor revisions. The first is the addition of new paragraph (d), which cross-references §1.6050H-2 regarding the time, form, and manner of reporting qualified mortgage interest. The addition of this cross-reference is intended to clarify that rules similar to the rules applicable to the time, form, and manner of reporting interest received on qualified mortgages apply to amounts required to be reported under §1.6050H-3(a) .

For instance, mortgage insurance premiums are reported on a Form 1098, "Mortgage Interest Statement," if the premiums received from that individual in the aggregate total \$600 or more.

The second revision relates to the effective date and applicability of these final regulations. On January 2, 2013, ATRA extended section 163(h) for premiums paid or accrued on or before December 31, 2013, or properly allocable to any period ending on or before December 31, 2013, on mortgage insurance contracts issued on or after January 1, 2007. In addition, ATRA extended section 163(h) retroactively for qualified mortgage insurance premiums paid or accrued during 2012. These final regulations under §1.6050H-3 require information reporting for mortgage insurance premiums received on or after January 1, 2013, and during periods to which section 163(h)(3)(E) is applicable. However, there were no final or temporary regulations requiring information reporting with respect to qualified mortgage insurance premiums paid or accrued during 2012. Therefore, information reporting with respect to qualified mortgage insurance premiums was not required for premiums paid or accrued during 2012.

Because information reporting with respect to mortgage insurance premiums received during 2012 was not required, no penalty under section 6721 or section 6722 will apply with respect to the failure to report mortgage insurance premiums received during 2012.

Further, the fact that an individual did not receive a Form 1098 reporting the amount of mortgage insurance premiums paid for 2012 does not affect whether the individual satisfied the requirements under section 163(h) to treat qualified mortgage

insurance premiums as qualified residence interest. Accordingly, any individual who paid or accrued qualified mortgage insurance premiums in the calendar year ending December 31, 2012, or properly allocated these premiums to the calendar year ending December 31, 2012, on mortgage insurance contracts issued on or after January 1, 2007, and who did not previously treat those amounts as qualified residence interest, may, within the applicable period of limitations, file a Form 1040X, "Amended U.S. Individual Income Tax Return," for 2012 to claim a refund based on the treatment of those amounts as qualified residence interest.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that this rule merely reinstates the mortgage insurance information reporting requirements on the Form 1098 that previously existed from 2007 through 2011. In addition, persons receiving mortgage insurance premiums already are required to file the Form 1098 to report interest received on qualified mortgages and completing the mortgage insurance premiums box imposes little or no incremental burden in time or expense. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. Chapter 6) is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking that preceded these final

regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business, and no comments were received.

Drafting Information

The principal author of these regulations is Janet Engel Kidd, Office of the Associate Chief Counsel, Procedure and Administration.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1--INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.6050H-3 is also issued under 26 U.S.C. 6050H(h).* * *

Par. 2. Section 1.6050H-3 is added to read as follows:

§1.6050H-3 Information reporting of mortgage insurance premiums.

(a) Information reporting requirements. Any person who, in the course of a trade or business, receives premiums, including prepaid premiums, for mortgage insurance (as described in paragraph (b) of this section) from any individual aggregating \$600 or more for any calendar year, must make an information return setting forth the total amount received from that individual during the calendar year.

(b) Scope. Paragraph (a) of this section applies to mortgage insurance provided by the Federal Housing Administration, Department of Veterans Affairs, or the Rural Housing Service (or their successor organizations), or to private mortgage insurance (as defined by section 2 of the Homeowners Protection Act of 1998 (12 U.S.C. 4901) as in effect on December 20, 2006). The rule stated in paragraph (a) of this section applies to the receipt of all payments of mortgage insurance premiums, by cash or financing, without regard to source.

(c) Aggregation. Whether a person receives \$600 or more of mortgage insurance premiums is determined on a mortgage-by-mortgage basis. A recipient need not aggregate mortgage insurance premiums received on all of the mortgages of an individual to determine whether the \$600 threshold is met. Therefore, a recipient need not report mortgage insurance premiums of less than \$600 received on a mortgage, even though it receives a total of \$600 or more of mortgage insurance premiums on all of the mortgages for an individual for a calendar year.

(d) Time, form, and manner of reporting. Mortgage insurance premiums required to be reported under paragraph (a) of this section must be reported on the Form 1098 or successor form that is filed pursuant to §1.6050H-2(a) with respect to the mortgage of the individual who paid the mortgage insurance premiums. For the requirements for furnishing statements with respect to Forms 1098 filed with the Internal Revenue Service, see §1.6050H-2(b).

(e) Cross reference. For rules concerning the allocation of certain prepaid qualified mortgage insurance premiums, see §1.163-11 of this chapter.

(f) Limitation on the reporting of mortgage insurance premiums. This section applies to mortgage insurance premiums described in paragraph (b) of this section that are paid or accrued on or after January 1, 2013, and during periods to which section 163(h)(3)(E) applies. This section does not apply to any amounts of mortgage insurance premiums that are allocable to any periods to which section 163(h)(3)(E) does not apply.

(g) Effective/applicability date. This section applies to mortgage insurance premiums received on or after January 1, 2013. For regulations applicable before May 5, 2012, see §1.6050H-3T as contained in 26 CFR part 1 (revised as of April 1, 2012).

§1.6050H-3T [Removed]

Par. 3. Section 1.6050H-3T is removed.

John M. Dalrymple,

Deputy Commissioner for Services and Enforcement.

Approved: October 1, 2013.

Mark J. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2013-28381 Filed 11/26/2013 at 8:45 am; Publication Date: 11/27/2013]